



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 225, and 252

RIN 0750-AI32

**Defense Federal Acquisition Regulation Supplement: Foreign
Commercial Satellite Services (DFARS Case 2014-D010)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with minor editorial changes, an interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 that prohibits acquisition of commercial satellite services from certain foreign entities.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the Federal Register at 79 FR 45662 on August 5, 2014, to implement section 1602 of the NDAA

for FY 2014 (Pub. L. 113-66). Section 1602 prohibits award of a contract for commercial satellite services to a foreign entity if the Secretary of Defense reasonably believes that the foreign entity—

- Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or
- Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country.

A covered foreign country means the People's Republic of China, North Korea, or any country that is a state sponsor of terrorism, as described in section 1261(c)(2) of the NDAA for FY 2013 (Pub. L. 112-239). State sponsors of terrorism, as determined by the Secretary of State, currently include Cuba, Iran, Sudan, and Syria.

No public comments were received in response to the proposed rule.

II. Discussion and Analysis.

This rule converts the interim rule, with only minor editorial changes, to a final rule.

III. Applicability to Acquisitions Not Greater Than the Simplified Acquisition Threshold (SAT) and Commercial Items.

10 U.S.C. 2279 is silent on applicability to contracts and subcontracts in amounts not greater than the SAT or for the acquisition of commercial items. Also, the statute does not provide for criminal or civil penalties. Therefore, it does not apply to the acquisition of contracts and subcontracts in amounts not greater than the SAT or the acquisition of commercial items unless the Director, DPAP, makes a written determination as provided in 41 U.S.C. 1905.

There is a potential risk to national security if DoD uses commercial satellite services for DoD communications and the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations, regardless of the dollar value of the contract or order. Likewise, if launch or other satellite services under the contract are occurring in a covered country, the government of that country could impact the ability of the foreign entity to adequately provide those services. Furthermore, although 10 U.S.C 2279 does not specifically reference 41 U.S.C. 1906, the statute only applies to the acquisition of commercial satellite services, so exempting commercial items from application of the statute would negate the intended effect of the statute. Therefore, consistent with 41 U.S.C. 1905 and 1906, the Director, Defense Procurement and Acquisition Policy, determined that it would not be in the best interest of the

United States to exempt acquisitions not greater than the SAT and acquisitions of commercial items from the applicability of 10 U.S.C. 2279.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, a final regulatory flexibility analysis has been performed and is summarized as follows:

DoD is converting to a final rule, without change, an interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1602 of the National Defense Authorization Act (NDAA) for FY 2014. Section 1602 added 10 U.S.C. 2279, which prohibits acquisition of commercial satellite services from certain foreign entities.

The objective of the rule is to implement 10 U.S.C. 2279, which is the legal basis for the rule. The statute prohibits award of contracts for commercial satellite services to a foreign entity that—

- Is an entity in which the government of a covered foreign country (i.e., the People's Republic of China, North Korea, Cuba, Iran, Sudan, or Syria) has an ownership interest that enables the government to affect satellite operations; or
- Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country.

There were no public comments in response to the initial regulatory flexibility analysis.

DoD estimates that this rule will apply to less than 111 small entities. According to Federal Procurement Data System data for FY 2013, 111 small entities were awarded contracts or orders for services in PSC D304 (ADP Telecommunications and Transmission Services), of which commercial satellite services are a subset.

Although the focus of the Regulatory Flexibility Act is protection of domestic small business entities that are eligible for assistance from the Small Business Administration, there may be domestic small business entities in the United States that offer the satellite services of a foreign entity that would be restricted by this rule.

This rule requires an annual representation as to whether the offeror is, or is not, a foreign entity subject to the prohibitions of the statute or is, or is not, offering commercial satellite services provided by such a foreign entity. Further information is required if the offeror provides an affirmative response to any of the representations, but such affirmative response and further submission is expected to be extremely rare.

This rule will not have a significant economic impact on any small entities, unless they are offering commercial satellite services provided by a foreign entity that is subject to the restrictions of this rule. DoD was not able to identify any alternatives that would reduce the burden on small entities and meet the objectives of the rule.

VI. Paperwork Reduction Act

The rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This

information collection requirement has been assigned OMB Control Number 0704-0525, titled: Foreign Commercial Satellite Services.

List of Subjects in 48 CFR Parts 204, 212, 225, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 204, 212, 225, and 252, which was published at 79 FR 45662 on August 5, 2014, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 212 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

2. Amend section 212.301 in paragraph (f)(xlviii) by removing "225.772-5" and adding "225.772-5, to comply with 10 U.S.C. 2279" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225-7049 [Amended]

3. Amending section 252.225-7049 by—

a. Removing the clause date of "(AUG 2014)" and adding "(DEC 2014)" in its place; and

b. In paragraph (b) introductory text, removing "DFARS 225.71-4" and adding "DFARS 225.772-4" in its place.

[FR Doc. 2014-28813 Filed 12/10/2014 at 8:45 am; Publication
Date: 12/11/2014]